

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MLC INTELLECTUAL PROPERTY, LLC,
Plaintiff,
v.
MICRON TECHNOLOGY, INC.,
Defendants.

Case No. [14-cv-03657-SI](#)

ORDER TO SHOW CAUSE

Re: Dkt. No. 250

On December 7, 2018, the Federal Circuit decided *Novartis Pharmaceuticals Corp. v. Breckenridge Pharmaceutical Inc.*, Case No. 2017-2173, ___ F.3d ___ (Fed. Cir. Dec. 7, 2018). The Federal Circuit held that a later-filed, earlier-expiring post-URAA patent is not a proper obviousness-type double patenting (“OTDP”) reference that can be used to invalidate an earlier-filed, later-expiring pre-URAA patent. Plaintiff contends that this decision renders defendant’s OTDP defense moot. Dkt. No. 250.

The Court is inclined to agree with plaintiff that *Novartis* precludes defendant’s OTDP defense, as the two patents upon which defendant relies as invalidating references, the ‘851 and ‘814 patents, are post-URAA patents that were filed after, and expired before, the pre-URAA ‘571 patent. Defendant is hereby directed to file a letter no later than **December 18, 2018**, informing the Court of its position regarding the viability of its OTDP defense post-*Novartis*. If defendant contends that it may still pursue this defense, the Court will issue a further order regarding what further proceedings are necessary to resolve this issue.

IT IS SO ORDERED.

Dated: December 13, 2018



SUSAN ILLSTON
United States District Judge